

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4) **MUR: 6861**

5 Marion Latroy Williams)

6 National Democratic Party of the U.S.A., Inc.)

7 Shelby County Democratic Club, Inc. d/b/a Shelby)

8 County Democratic Party, Inc.)

9 Memphis Democratic Club, Inc.)

10 International Communications Association)

11
12 **SECOND GENERAL COUNSEL'S REPORT**

13
14 **I. ACTIONS RECOMMENDED**

15 We recommend that the Commission exercise its prosecutorial discretion and (1) take no
16 further action as to Marion Latroy Williams ("Williams"); National Democratic Party of the
17 U.S.A., Inc. ("NDP"); Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic
18 Party, Inc. ("SCDC"); Memphis Democratic Club, Inc. ("MDC"); and International
19 Communications Association ("ICA") (collectively, "Respondents"); (2) approve a letter of
20 caution; and (3) close the file.¹

21 **II. BACKGROUND**

22 On March 15, 2016, the Commission found reason to believe that Williams and four local
23 political clubs that he controlled (NDP, SCDC, MDC, and ICA) violated 52 U.S.C. § 30104(c)
24 by failing to file independent expenditure reports for sample ballots, mailers, posters, yard signs,
25 and television and radio advertisements that expressly advocated the election of 2014 Tennessee
26 Congressional candidate Ricky Wilkins, and 52 U.S.C. § 30120 by failing to include proper
27 disclaimers in these communications.² The Office of General Counsel conducted an

¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

² At the same time, the Commission found no reason to believe Respondents violated 52 U.S.C. § 30124 by fraudulently misrepresenting themselves as the official national and local Democratic Party committees in the communications. See MUR 6861 Amended Certification (Mar. 23, 2016); MUR 6861 Factual & Legal Analysis at 4-5 ("F&LA").

1 investigation to determine the amount spent on these communications. The investigation
2 revealed that Respondents spent approximately \$3,134 on the federal portions of these
3 communications. Consistent with the Commission's actions in past matters with similar dollar
4 amounts involved, we recommend that the Commission exercise its prosecutorial discretion to
5 take no further action against Respondents other than issuing a letter of caution, and close the
6 file.

7 **III. SUMMARY OF THE INVESTIGATION**

8 Marion Latroy Williams established and operates NDP, SCDC, MDC, and ICA as local
9 political clubs in the Memphis, Tennessee area.³ Respondents describe the clubs as membership
10 organizations, funded primarily through membership fees, which work closely with local
11 candidates for judgeships, county clerks, county commissioners, and other local offices.⁴ The
12 organizations produce sample ballots, mailers, posters, yard signs, and radio and television
13 advertisements primarily to disseminate information about candidates for local and state
14 elections and to express support for those candidates.⁵ Williams exercised control over each of
15 these organizations, was the registered agent for each, and apparently treated them as affiliated
16 and interchangeable.⁶ Williams used a single bank account, which he established and controlled,

³ Second Supp. Resp. at 1 (Jan. 4, 2016). The clubs are limited liability corporations. *Id.*

⁴ *Id.*

⁵ See Email from Paul Robinson, Esq. to Camilla Jackson Jones, Attorney, FEC (May 16, 2016, 4:46 PM EST) ("May 16, 2016 Robinson Email"), Attach. (showing images of sample ballots, mailers, posters, and yard signs).

⁶ Williams notes that the organizations are affiliated, or that one organization is "doing business as" another, in filings with the Tennessee Secretary of State and the Circuit Court of Tennessee. *Id.* at 1; see also, Compl. at Ex. 1 (filing by Shelby County Democratic Club, Inc. with Tennessee Secretary of State Office listing Williams as its registered agent, and Memphis Democratic Club, Inc. and Shelby County Democratic Party, Inc. as assumed names); Email from Marion Williams to Kim Collins, Paralegal, FEC (Oct. 4, 2014, 10:39 PM EST), Attach. 1 & 2.

1 to pay for all expenditures made by these entities and he used their names interchangeably when
2 contracting for printing services or television and radio advertisement buys.⁷

3 Beginning in mid-July 2014, Respondents began to prepare and distribute by hand and
4 mail 28,000 sample ballots and mailers that listed over two dozen local, state, and federal
5 candidates who Respondents supported in the August 7, 2014, Tennessee Democratic primary
6 election.⁸ Wilkins, a candidate for the U.S. House of Representatives in Tennessee's 9th
7 Congressional District, was the only federal candidate in the sample ballots and mailers. The
8 communications include Wilkins's name and photograph, and specify the office he was seeking,
9 "Congress 9th Dist." The top of the communications read, "Shelby County Democratic Club
10 Endorsements" or "Unity Ballot... Endorsed by Shelby County Democratic Club."⁹ In a box at
11 the bottom, the sample ballots and mailers include the statement "Paid for by the Committee to
12 Elect Better Government," or the statement "Paid for by the Committee to Elect Better
13 Government, Dr. Cynthia A. Gentry, PhD, Co-Chairman M. Latroy Williams Coordinator" (*sic*).¹⁰

14 Wilkins was also the sole candidate endorsed on a limited number of yard signs and
15 posters that Respondents produced and distributed during the same time period. The yard signs

⁷ See Email from Marion Williams to Camilla Jackson Jones, Attorney, FEC (Oct. 31, 2016, 6:45 PM EST) ("Oct. 31, 2016 Williams Email"), Attach. (Sun Trust Account Statement); *see also*, May 16, 2016 Robinson Email, Attach. (printing and television and radio advertising purchase invoices).

⁸ *Id.* On August 3, 2014, a few weeks after the initial sample ballots, mailers, posters, and signs were purchased and distributed and the first television and radio advertisements aired, the campaign of one of Wilkins's opponents obtained a temporary injunction against Respondents from the Circuit Court of Tennessee based on allegations that Respondents were misrepresenting themselves in their materials as being official Democratic Party organizations. The temporary injunction was granted on August 4, 2014. *See* Compl., Attach. Order Granting Temporary Injunction, signed by Judge Karen R. Williams (Aug. 4, 2014). Because of the injunction, Respondents immediately ceased all production and distribution of any public communications supporting any candidate. *See* May 16, 2016 Robinson Email. The communications discussed in this report encompass all of the communications paid for by Respondents during the 2014 primary election.

⁹ See May 16, 2016 Robinson Email, Attach. (Images of sample ballots, mailers, posters, and yard signs).

¹⁰ See Williams Statement at 1-2.

1 include Wilkins's photograph and the statement, "National Democratic Party U.S.A. has
2 endorsed Ricky Wilkins...9th Congressional District."¹¹ Between July 15 and 27, 2014,
3 Respondents distributed an approximate total of twelve posters and yard signs. The posters and
4 yard signs included the statement, "Paid for by the Committee to Elect Democrats, M.F. Banks,
5 Chairman;" this statement was not contained in a printed box set apart from the other contents of
6 the communication.¹²

7 Respondents also paid for six one-minute radio and television advertisements endorsing
8 Wilkins, which aired locally between July 27, 2014 and August 3, 2014. Respondents were
9 unable to produce the scripts of the radio and television advertisements and do not know whether
10 the advertisements contained disclaimers.

11 Respondents spent approximately \$4,400 on the communications, \$3,134 of which was
12 allocable to express advocacy of Wilkins, a federal candidate.¹³

Independent Expenditure	Candidate(s) supported by expenditure	Amount of federal expenditure ¹⁴
Yard signs	Wilkins only	\$2,495 (100% federal)
Radio and television airtime	Wilkins only	\$600 (100% federal)
Sample ballots and mailers	Wilkins and 29 state and local candidates	\$39 (3% of \$1,312 spent)
		Total = \$3,134

¹¹ *Id.*

¹² *See* 11 C.F.R. § 110.11(c)(2).

¹³ *See* 11 C.F.R. § 106.1(a) (regarding allocation of independent expenditures between candidates).

¹⁴ *See* Email from Paul Robinson, Esq. to Camilla Jackson Jones, Attorney, FEC (Oct. 25, 2016, 11:31 AM EST), Attach. (Statement by Marion Latroy Williams) ("Williams Statement") at 1-2; May 16, 2016 Robinson Email, Attach. (Clear Channel Media & Entertainment Invoice dated 8/3/14); Email from Paul Robinson, Esq. to Camilla Jackson Jones, Attorney, FEC (Oct. 21, 2016, 5:32 AM EST), Attach. (Signs & Printing Invoices dated 6/8/14 and 6/10/14).

1 Respondents admit that regardless of the name of the organization listed on the
2 disclaimer, the funds used to pay for the sample ballots, mailers, posters, yard signs and radio
3 and television advertisements came from Williams and/or ICA. Disbursements for these
4 expenditures were made with funds from a bank account held in the name of "Marion L.
5 Williams d/b/a/ International Communications & Associates."¹⁵ Respondents assert that these
6 communications were the totality of their activity in 2014.¹⁶

7 IV. DISCUSSION

8 The Act requires every person, other than a political committee, who makes independent
9 expenditures over \$250 in a calendar year to disclose those expenditures in reports to the
10 Commission.¹⁷ The investigation in this matter confirmed that Respondents — operating from a
11 single shared bank account controlled by Williams — made \$3,134 in independent expenditures
12 supporting Wilkins during the 2014 Democratic primary.¹⁸ Therefore, Respondents were

¹⁵ See May 16, 2016 Robinson Email; Oct. 31, 2016 Williams Email, Attach. (Sun Trust Account Statement). We do not know whether the Respondent organizations held separate accounts, but disbursements for the communications at issue were all made from this one account.

¹⁶ Second Supp. Resp. at 2; Marion L. Williams Statement at 2-3 (Oct. 25, 2016).

¹⁷ 52 U.S.C. § 30104(c)(1). "Independent expenditures" are expenditures by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. *Id.* § 30101(17); see also *id.* § 30101(9)(A)(i); 11 C.F.R. § 100.111 (defining expenditure as any "purchase, payment, distribution, loan, ... advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office").

¹⁸ In the First General Counsel's Report we indicated that if Respondents made more than \$1,000 in independent expenditures, we would review whether the Respondent organizations are "political committees." First Gen. Counsel's Rept. at n. 18 (Mar. 30, 2015). See also 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5; *Buckley v. Valeo*, 424 U.S. 1 at 79 (1976) (defining political committee). The investigation shows that Respondents surpassed the \$1,000 threshold by making \$3,134 in independent expenditures, and that those independent expenditures constituted a majority of the groups' 2014 activity (which appears to be limited to the \$4,400 it spent on the communications at issue in this matter). However, because of the limited amount of activity and money involved, we make no recommendation on the political committee status issue in this report.

1 required to report these independent expenditures to the Commission, pursuant to 52 U.S.C. §
2 30104(c), but they did not.¹⁹

3 Additionally, under the Act and Commission regulations, any public communication that
4 expressly advocates the election or defeat of a clearly identified federal candidate must include a
5 disclaimer.²⁰ A "public communication" is a communication by means of any broadcast, cable,
6 or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
7 telephone bank to the general public, or any other form of general public political advertising.²¹
8 A "mass mailing," is a mailing of more than 500 pieces of mail of an identical or substantially
9 similar nature within any 30-day period.²² Public communications include "electioneering
10 communications," which are any broadcast, cable, or satellite communications that refer to a
11 clearly identified candidate for federal office and are publicly distributed within 60 days before a
12 general election or 30 days before the primary election of the office the candidate is seeking.²³
13 In this matter, the sample ballots, mailers, and signs, as well as the radio and television

¹⁹ MUR 6861 F&LA at 5-6.

²⁰ See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2). A communication expressly advocates the election or defeat of a clearly identified federal candidate if it uses "phrases" such as "Smith for Congress," "Bill McKay in '94," or "vote Pro-Life" or "vote Pro-Choice" with a listing of clearly identified candidates described as Pro-Life or Pro-Choice, among other enumerated examples, or "communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates such as posters, bumper stickers, advertisements, etc., which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush,' or 'Mondale!'" See Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 70 Fed. Reg. 35,292, 35,294-35,295 (July 6, 1995) (explanation and justification); see also *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when "it provides, in effect, an explicit directive" to vote for the named candidates).

²¹ 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26. See also MUR 5552 (Washington Promotions and Printing, Inc.) First Gen. Counsel's Rept. at n.1 (explaining that yard signs are within definition of "public communication").

²² 52 U.S.C. § 30101(23); see 11 C.F.R. § 100.27.

²³ 11 C.F.R. § 100.29.

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1 advertisements, are "public communications" expressly advocating the election of Wilkins, a
2 federal candidate, and therefore, they are required to include a disclaimer.²⁴

3 The Act and Commission regulations set out specific disclaimer requirements for a
4 communication not authorized by a candidate's authorized committee, such as the
5 communications in this matter. The disclaimer must clearly state the name and permanent
6 address, telephone number, or website address of the person who paid for the communication
7 and state that the communication is not authorized by any candidate or candidate's committee.²⁵
8 For printed communications, the disclaimer must also, among other requirements, be contained
9 in a printed box set apart from the other contents of the communication.²⁶ Further, radio and
10 television advertisements also require additional spoken disclaimers that state who is responsible
11 for the content of the advertisement.²⁷

12 With regard to the radio and television advertisements, Respondents have not contested
13 the Commission's reason to believe findings regarding the disclaimer violations, nor have they
14 provided information to undermine the basis for that finding. However, because we have not
15 seen the scripts for the radio and television advertisements we do not know if the disclaimer met
16 the requirements of the Act's regulations.

17 We do know, however, that the sample ballots, mailers, and signs did not satisfy the
18 requirements of the Act and Commission regulations because they failed to identify the full name
19 of the person who paid for the communication; instead, they identified a false payor. Further,

²⁴ 11 C.F.R. §§ 100.26, 100.27, 100.29.

²⁵ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

²⁶ 52 U.S.C. § 30120(c)(2); 11 C.F.R. § 110.11(c)(2)(ii).

²⁷ 52 U.S.C. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4).

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1 these materials did not identify the permanent street address, telephone number, or web address
2 of the payor, state that the communication was not authorized by any candidate or candidate's
3 committee, or set the disclaimer apart from the communication's other contents in a printed box,
4 where required.²⁸

5 Although Respondents failed to disclose independent expenditures and use proper
6 disclaimers, as required by 52 U.S.C. §§ 30104(c) and 30120, the total cost of the public
7 communications supporting the federal candidate was only \$3,134. In previous matters
8 involving similar facts and amounts in violation, the Commission exercised prosecutorial
9 discretion and declined to pursue such matters because the cost of the communications was
10 *de minimis*.²⁹ Consistent with the action taken in prior similar matters, we recommend that the
11 Commission, in an exercise of its prosecutorial discretion, take no further action regarding the
12 violations of 52 U.S.C. §§ 30104(c) and 30120 by Marion Latroy Williams and National
13 Democratic Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby County
14 Democratic Party, Inc., Memphis Democratic Club, Inc., and International Communications
15 Association.³⁰ We further recommend the Commission issue a letter of caution regarding the
16 proper reporting of independent expenditures and use of disclaimers in public communications,
17 and close the file.

²⁸ MUR 6861 F&LA at 6-8; 52 U.S.C. § 30120; 11 C.F.R. § 110.11.

²⁹ See MUR 6838 (Aossey) (taking no further action and issuing letter of caution for failure to disclose independent expenditures for postcard mailers that cost \$3,250 and contained partial—and false—disclaimers); MUR 6377 (Harry Reid Votes) (dismissing with caution failure to disclose independent expenditures for radio advertisements that cost \$2,135 and contained partial disclaimers); see also MUR 6642 (Kaufman) (taking no further action and issuing letter of caution for failure to report independent expenditures for billboards that cost \$3,000 and included partial disclaimers).

³⁰ Heckler, 470 U.S. at 821.

V. RECOMMENDATIONS

1. Take no further action regarding violations of 52 U.S.C. § 30104(c) by Marion Latroy Williams and National Democratic Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc., Memphis Democratic Club, Inc., and International Communications Association, for failing to report independent expenditures;
2. Take no further action regarding violations of 52 U.S.C. § 30120 by Marion Latroy Williams and National Democratic Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc., Memphis Democratic Club, Inc., and International Communications Association, for failing to include proper disclaimers in their public communications;
3. Approve the appropriate letters, including a cautionary letter to the Respondents; and
4. Close the file.

Lisa J. Stevenson
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12/22/17
Date

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